

NOT TO BE PUBLISHED

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Siskiyou)

THE PEOPLE,

Plaintiff and Respondent,

v.

TERRY JOE WILLHOIT,

Defendant and Appellant.

C045659

(Super. Ct. Nos.
00-2471 & 03-2480)

Defendant Terry Joe Willhoit appeals following judgment and sentencing in two felony cases. In case No. 03-2480, defendant pleaded guilty to assault with a deadly weapon by means of force likely to cause great bodily injury (Pen. Code, § 245, subd. (a)(1) - count 1) and false imprisonment by violence (Pen. Code, § 236 - count 3). The charges arose from defendant's September 2003 assault on J.L.W., the mother of his newborn child. Defendant admitted the crimes were serious felonies under the "Three Strikes" law. (Pen. Code, § 1192.7, subd. (c)(23).) The court dismissed the remaining counts on the People's motion.

Defendant also admitted he had violated probation in case No. 00-2471. The trial court had granted probation in that case after defendant pleaded guilty to manufacturing methamphetamine. (Health & Saf. Code, § 11379.6, subd. (a).) Defendant agreed he would receive an aggregate term of six years four months for both cases.

The trial court sentenced defendant to six years four months in prison in accordance with the plea agreement: the upper term of four years in count 1; a consecutive term of eight months or one-third the middle term of two years in count 3; and a consecutive term of one year and eight months or one-third the middle term for the conviction underlying the probation revocation. Among other fines, fees and penalties, the trial court ordered defendant to pay a \$1,000 restitution fine in case No. 03-2480 and a \$200 restitution fine in case No. 00-2471. (Pen. Code, § 1202.4, subd. (b)(1).)

We appointed counsel to represent defendant on appeal. Counsel filed an opening brief that sets forth the facts of the case and requests this court to review the record and determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days elapsed, and we received no communication from defendant.

Our review reveals that the trial court had previously ordered defendant to pay a \$200 restitution fine pursuant to Penal Code section 1202.4, subdivision (m), when it placed him

on formal probation in case No. 00-2471. The second restitution fine imposed in case No. 00-2471 is unauthorized because the first fine survived revocation of probation. (*People v. Chambers* (1998) 65 Cal.App.4th 819, 823.)

Having undertaken an examination of the entire record, we find no other arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is modified to strike the \$200 restitution fine imposed by the trial court in case No. 00-2471 at sentencing in October 2003. The judgment is affirmed as modified. The trial court is directed to prepare an amended abstract of judgment in accordance with this disposition and forward it to the Department of Corrections.

_____, J.
NICHOLSON

We concur:

_____, P.J.
SCOTLAND

_____, J.
RAYE